

REQUEST FOR RECONSIDERATION

Claims 1-7, 9 and 11-19 remain active in this application.

The claimed invention is directed to a skin cleansing composition as well as a method of skin cleansing.

Skin cleaning often faces the problem of concurrently removing oil-soluble and water-soluble material. Emulsion formulations can provide imbalanced cleansing ability favoring removal of the stains compatible with the continuous phase of the emulsion. Efforts to date with compositions of a bicontinuous structure have displayed difficulty with respect to cleansing ability, removability, as well as environmental compatibility. Accordingly, skin cleansing compositions demonstrating broad soil removing ability and a bicontinuous structure are sought.

The claimed invention addressed this problem by providing a skin cleaning composition comprising an oil component, a hydrophilic nonionic surfactant, a lipophilic amphiphile which is at least one amphiphile selected from the group consisting of **fatty alcohols having 8 to 25 carbon atoms, fatty acids having 8 to 25 carbon atoms and monoalkylphosphoric acids having 8 to 25 carbon atoms**, a water-soluble solvent and water, the composition having **an isotropic liquid phase exhibiting a bicontinuous structure** and a ratio of water-soluble substance to hydrophilic nonionic surfactant plus lipophilic amphiphile of at least 1. Applicant has discovered that such a composition having an isotropic liquid phase exhibiting a bicontinuous structure provides for effective skin cleaning of both oil and aqueous stains. Such a skin cleaning composition is nowhere disclosed or suggested in the cited art of record.

The rejection of claims 1-7, 9 and 11-19 under 35 U.S.C §103(a) over Watanabe et al. U.S. 6,346,507 in view of EP 103910 is respectfully traversed.

The references fails to identify a lipophilic amphiphile as a component of an isotropic liquid phase exhibiting a bicontinuous structure.

Watanabe et al. describes a liquid crystal composition having a liquid crystal phase and/or an isotropic surfactant continuous phase (e.g. a bicontinuous structure) (see abstract and page 3 of applicants' specification). The composition comprises 1-70 wt. % of a silicone oil (column 3, lines 55-67), 10-60 wt.% of a non-ionic surfactant (column 3, lines 13-27) such as polyethylene glycol fatty acid ester (column 3, line 19), 1-50 wt. % of a water-soluble substance having a hydroxyl group (e.g. ethanol, propanol (column 3, lines 28-48) and 10-60 wt. % water (column 4, lines 6-8). A one-phase system of isotropic surfactant continuous phase is described (column 3, lines 4-8). In spite of the description of an isotropic surfactant continuous phase, the reference **fails to disclose** 1-45 wt. % of a lipophilic amphiphile of a fatty alcohol, a fatty acid or a monoalkylphosphoric acid **as a component of** an isotropic liquid phase **exhibiting a bicontinuous phase**.

The basic deficiencies of the primary reference are not cured by EP '910.

EP '910 had been cited for a disclosure of emollients and skin conditioning agents such as fatty acids and fatty alcohols which have been identified by applicants as suitable lipophilic amphiphiles. The office action reasons that such a disclosure provides motivation to include fatty acids and/or fatty alcohols **in a cosmetic composition** for the purposes of treating dry skin and providing a barrier protection.

Applicants respectfully submit that formation of an isotropic liquid phase exhibiting a bicontinuous structure is difficult such that there would be no expectation of successfully forming an isotropic liquid phase which exhibits a bicontinuous structure which contained a lipophilic amphiphile **as a component of the isotropic liquid phase**.

As discussed on page 18 of applicants' specification, the claimed isotropic liquid phase exhibiting a bicontinuous structure means a transparent or translucent low-viscosity

solution which has an aqueous phase and an oil phase each existing continuously and is optically isotropic. Specifically, it means a middle phase (or D phase) and a sponge phase (or L₃ phase). Thus, the components of (A) oil, (B) hydrophilic nonionic surfactant, (C) lipophilic amphiphile, (D) water soluble solvent, and (E) water, together form an isotropic liquid phase exhibiting a bicontinuous structure.

Watanabe et al. fails to suggest an lipophilic amphiphile as a component of an isotropic liquid phase exhibiting a bicontinuous structure as Watanabe et al. fails to suggest an lipophilic amphiphile. To the contrary, Watanabe et al describes formation of a composition which exhibits a one-phase system which is any one of a gel phase, a liquid crystal phase or an isotropic surfactant continuous phase **formed by associating** a surfactant or a coexisting phase system of any of the gel phase, the liquid crystal phase or the isotropic surfactant continuous phase and the other phases, **in the absence of a lipophilic amphiphile**. The careful selection of components, and the association a surfactant or a coexisting phase system and the other phases, would not suggest to those of ordinary skill in the art that an added lipophilic amphiphile could be incorporated into an isotropic liquid phase exhibiting a bicontinuous structure.

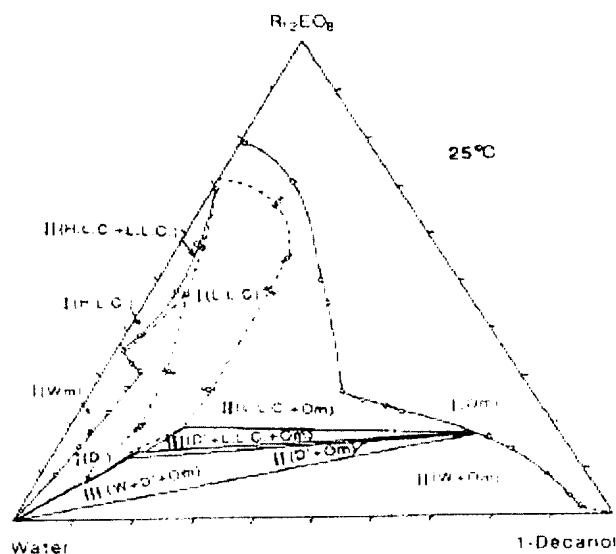
Further evidence of the expected stability of the one-phase system of Watanabe et al. is found in the disclosure at column 1, lines 59-62 that a liquid crystal one-phase system has a heavy feeling at application **because a liquid crystal structure is somewhat difficult to break**. The assertion of phase stability for a one-phase liquid crystal structure would not suggest that other components could be incorporated therein, retaining such a one-phase liquid crystal structure.

Thus, while fatty acids and fatty alcohols have been reported as components in cosmetic compositions, there is nothing in the cited references to suggest that fatty acids

and/or fatty alcohols could be incorporated as components in an isotropic liquid phase exhibiting a bicontinuous structure.

Further evidence of the difficulty in forming an isotropic liquid phase exhibiting a bicontinuous structure is found in the attached publication from 1991 in Journal of Oleo Science by Mitsuhide Yoshida and Kironobu Kunieda of the Faculty of Engineering Yokohama National University.

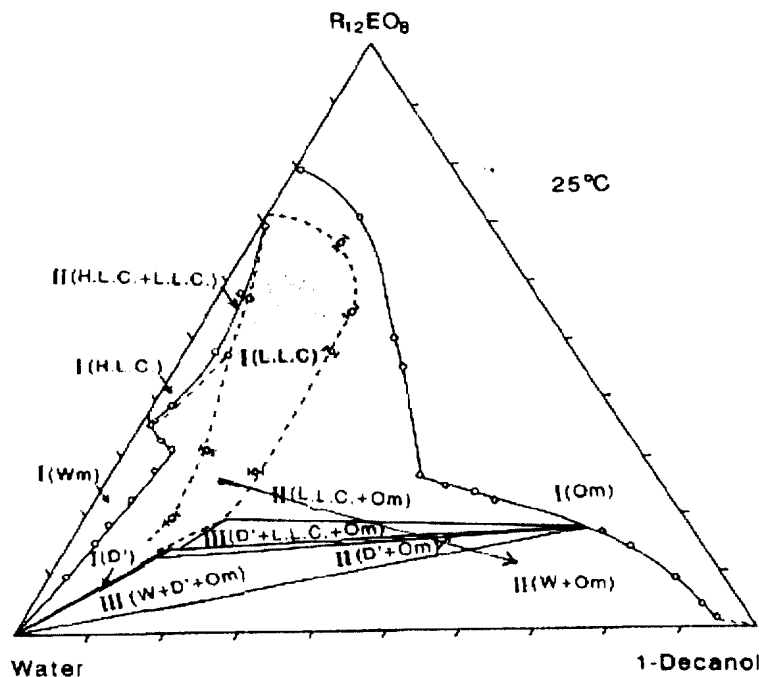
Messrs. Yoshida and Kunieda examined the phase behavior of a tri-component system of water/ $R_{12}EO_8$ /1-decanol at 25°C. 1-decanol is a fatty alcohol. Figure 1, from page 20 is reproduced below:



I, II and III indicate one-, two- and three-phase regions, respectively. Wm and Om are aqueous micellar and nonaqueous reversed micellar phases. W is an excess water phase. D' denotes a surfactant phase, which corresponds to L_3 , different from D phase observed in water/nonionic surfactant/hydrocarbon systems. L.L.C. and Hex. denote lamellar and hexagonal liquid crystalline phases, respectively.

Fig.-1 Phase diagram of a water/ $R_{12}EO_8$ /1-decanol system at 25 °C.

The figure illustrates the various phases exhibited by a system of water/ $R_{12}EO_8$ /1-decanol. It is noted that when 1-decanol is added to a lamella liquid crystal one-phase system (I (L, L, C)) the phase is moved to the lower right, as illustrated by the arrow in the figure below:



Such movement is **away from** the disclosed D' **one-phase system**. Further when 1-decanol is added in a D' one-phase system, the composition is changed to a two or three phase system. Thus, incorporation of a fatty alcohol has been demonstrated to destabilize a lamella liquid crystal one-phase system.

As Watanabe et al. describes the careful construction of a one-phase system, in the absence of a lipophilic amphiphile, and describes a high stability for a formed liquid crystal phase and applicants have provided literature evidence of a destabilizing nature of a lipophilic amphiphile in the form of a fatty alcohol, there would have been no expectation of incorporating a lipophilic amphiphile into an isotropic liquid phase exhibiting a bicontinuous

structure. For this reason, the claimed composition containing a lipophilic amphiphile as a component of an isotropic liquid phase exhibiting a bicontinuous structure is not obvious.

Since the cited combination of references fails to suggest component (C) as a component of an isotropic liquid phase exhibiting a bicontinuous phase, the claimed invention is not rendered obvious by the cited references and withdrawal of the rejections under 35 U.S.C. 103(a) is respectfully requested.

Applicants note the examiner's failure to indicate consideration of JP 200-256132 submitted by applicants in and IDS on July 16, 2008. Applicants note that JP-200256132 was cited on December 19, 2006 during an opposition filed in the European Patent Office as document D4. An English language translation of the opposition was submitted in the IDS.

Where the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance **can be satisfied by submitting an English-language version of the search report** or action which indicates the degree of relevance found by the foreign office. This may be an explanation of which portion of the reference is particularly relevant, to which claims it applies, or merely an "X", "Y", or "A" indication on a search report. (M.P.E.P. §§ 609.04(a) III emphasis added)

Since a concise explanation is **not required** where a complete English translation of the information is provided, it stands to reason that the examiner is required to consider a non-English language reference to the extent that a concise explanation is provided. Accordingly, the examiner is again invited to consider patentability of the claimed invention in view of JP 200-256132.

Applicant submits that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

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